

BEFORE THE DIVISION OF INSURANCE

STATE OF COLORADO

FINAL AGENCY ORDER O-10-004

**IN THE MATTER OF THE MARKET CONDUCT EXAMINATION OF UNITED
HEALTHCARE INSURANCE COMPANY**

Respondent

THIS MATTER comes before the Colorado Commissioner of Insurance (the "Commissioner") as a result of a market conduct examination conducted by the Colorado Division of Insurance (the "Division") of United HealthCare Insurance Company (the "Respondent"), pursuant to §§ 10-1-201 to 207, C.R.S. The Commissioner has considered and reviewed the market conduct examination report dated April 30, 2009 (the "Report"), relevant examiners' work papers, all written submissions and rebuttals, and the recommendations of staff. The Commissioner finds and orders as follows:

FINDINGS OF FACT

1. At all relevant times, the Respondent was licensed by the Division as a Life, Accident and Health Insurance Company.
2. In accordance with §§ 10-1-201 to 207, C.R.S., on April 30, 2009, the Division completed a market conduct examination of the Respondent. The period of examination was January 1, 2007 to December 31, 2007.
3. In scheduling the market conduct examination and in determining its nature and scope, the Commissioner considered such matters as complaint analyses, underwriting and claims practices, pricing, product solicitation, policy form compliance, market share analyses, and other criteria as set forth in the most recent available edition of the Market Regulation Handbook adopted by the National Association of Insurance Commissioners, as required by § 10-1-203(1), C.R.S.
4. In conducting the examination, the examiners observed those guidelines and procedures set forth in the most recent available edition of the Market Regulation Handbook adopted by the National Association of Insurance Commissioners and the Colorado insurance examiners' handbook. The Commissioner also employed other guidelines and procedures that she deemed appropriate, pursuant to § 10-1-204(1), C.R.S.

5. The market conduct examiners prepared a Report. The Report is comprised of only the facts appearing upon the books, records, or other documents of the Respondent, its agents or other persons examined concerning Respondent's affairs. The Report contains the conclusions and recommendations that the examiners find reasonably warranted based upon the facts.
6. Respondent delivered to the Division written submissions and rebuttals to the Report.
7. The Commissioner has fully considered and reviewed the Report, all of Respondent's submissions and rebuttals, and all relevant portions of the examiners' work papers.

CONCLUSIONS OF LAW AND ORDER

8. Unless expressly modified in this Final Agency Order ("Order"), the Commissioner adopts the facts, conclusions and recommendations contained in the Report. A copy of the Report is attached to the Order and is incorporated by reference.
9. Issue A1 concerns the following violation: Certifying and using forms that do not comply with Colorado insurance law. The Respondent shall provide evidence to the Division that it has revised its procedures to ensure that all policy forms to be issued or delivered to Colorado residents comply with statutory mandates as required by Colorado insurance law. The Division's records indicate that the Respondent has complied with the corrective actions ordered concerning this violation.
10. Issue A2 concerns the following violation: Failure to use correct form numbers for some forms reported on the Annual Report of Policy Forms as being in use during 2007. The Respondent shall provide evidence to the Division that it has implemented procedures to ensure that the form numbers for all forms that were in use during the year are reflected correctly on its Annual Certification Report of Forms. The Division's records indicate that the Respondent has complied with the corrective actions ordered concerning this violation.
11. Issue A3 concerns the following violation: Failure, in some instances, to maintain records required for market conduct purposes. The Respondent shall provide evidence to the Division that it has implemented procedures to ensure that all records required for a market conduct examination purposes are maintained in compliance with Colorado insurance law. The Division's records indicate that the Respondent has complied with the corrective actions ordered concerning this violation.

12. Issue A4 concerns the following violation: Failure to report to the Division the correct number of second level and independent external appeals requested and completed in 2007. The Respondent shall provide evidence to the Division that it has implemented procedures to ensure that correct information regarding appeals is reflected in all required reports as required by Colorado insurance law. The Division's records indicate that the Respondent has complied with the corrective actions ordered concerning this violation.
13. Issue C1 concerns the following violation: Failure to enter all written first level and second level reviews into the Company's complaint record. The Respondent shall provide evidence to the Division that it has implemented procedures to ensure that all written first and second level reviews are entered into the Company's complaint record in compliance with Colorado insurance law. The Division's records indicate that the Respondent has complied with the corrective actions ordered concerning this violation.
14. Issue E1 concerns the following violation: Failure to reflect that there is no age limit for the mandated coverage to be provided for the treatment of cleft lip and/or cleft palate. The Respondent shall provide evidence to the Division that it has implemented procedures to ensure that its forms reflect the mandated coverage to be provided for the treatment of children born with cleft lip and/or cleft palate as required by Colorado insurance law. The Division's records indicate that the Respondent has complied with the corrective actions ordered concerning this violation. The Company shall also perform a self audit from January 1, 2007 to the date of the Final Agency Order and correct any claims for cleft lip and/or cleft palate that may have been incorrectly processed.
15. Issue E2 concerns the following violation: Failure to disclose the existence and availability of an access plan in health benefit plans. The Respondent shall provide evidence to the Division that it has implemented procedures to ensure that all health benefit plan forms clearly disclose the existence and availability of an access plan as required by Colorado insurance law. The Division's records indicate that the Respondent has complied with the corrective actions ordered concerning this violation.
16. Issue E3 concerns the following violation: Failure to reflect mandatory repair and replacement coverage to be provided for prosthetic devices. The Respondent shall provide evidence to the Division that it has corrected all applicable forms to reflect correct coverage for prosthetic devices as required by Colorado insurance law. The Division's records indicate that the Respondent has complied with the corrective actions ordered concerning this violation. The Company shall also perform a self audit from January 1, 2007 to the date of the Final Agency Order and correct any claims for repairs or replacement of prosthetic devices that may have been

incorrectly processed.

17. Issue E4 concerns the following violation: Failure to specify the period to be used for mammogram coverage. The Respondent shall provide evidence to the Division that it has corrected all applicable forms to reflect a complete description of benefits to be provided for mammograms as required by Colorado insurance law. The Division's records indicate that the Respondent has complied with the corrective actions ordered concerning this violation.
18. Issue E5 concerns the following violation: Failure to allow benefits for covered services based on a licensed provider's status as a member of the insured's family or having the same legal residence. The Respondent shall provide evidence to the Division that it has implemented procedures to ensure that reimbursement for covered services provided by a licensed provider is not denied based solely upon the provider's status as a family member or because the provider lives at the same address as the insured. The Division's records indicate that the Respondent has complied with the corrective actions ordered concerning this violation. The Company shall also perform a self audit from January 1, 2007 to the date of the Final Agency Order and correct any claims for eligible providers that may have been incorrectly denied.
19. Issue E6 concerns the following violation: Failure to reflect accurate requirements to qualify as a dependent. The Respondent shall provide evidence to the Division that it has corrected all applicable forms to reflect accurate requirements to qualify as a dependent as required by Colorado insurance law. The Division's records indicate that the Respondent has complied with the corrective actions ordered concerning this violation.
20. Issue E7 concerns the following violation: Failure to accurately reflect the coverage to be offered for Home Health Services and Hospice Care. The Respondent shall provide evidence to the Division that it has implemented procedures to ensure that the required coverage to be offered for home health services and hospice care is accurately reflected in all its policies and certificate forms as required by Colorado insurance law. *(This was prior issue E2 in the findings of the 2002 final examination report.)* In the Market Conduct examination for the period January 1, 2002 through December 31, 2002, the Company was cited for failure to provide a complete and accurate description of the required Hospice Care benefits. The violation resulted in Recommendation #2; that the Company revise all affected forms to reflect the correct Hospice Care benefits as mandated by Colorado insurance law. Failure to comply with the previous recommendation and order of the commissioner may constitute a violation of §10-1-205, C.R.S. The Division's records indicate that the Respondent

has complied with the corrective actions ordered concerning this violation.

21. Issue E8 concerns the following violation: Failure to reflect correct coverage for court-ordered substance abuse treatment. The Respondent shall provide evidence to the Division that it has corrected all applicable forms to ensure that coverage for substance abuse treatment is provided when medically necessary, regardless of whether the treatment is voluntary or court-ordered as a result of contact with the criminal justice or legal system, in compliance with Colorado insurance law. The Division's records indicate that the Respondent has complied with the corrective actions ordered concerning this violation.
22. Issue E9 concerns the following violation: Failure to reflect the mandated minimum hours of hospital stay to be provided for normal and cesarean section deliveries. The Respondent shall provide evidence to the Division that it has revised all applicable forms to correctly reflect the mandated minimum hours of hospital stay to be provided for normal and cesarean section deliveries. The Division's records indicate that the Respondent has complied with the corrective actions ordered concerning this violation.
23. Issue E10 concerns the following violation: Failure to utilize a fraud statement that is substantially the same as required by Colorado insurance law. The Respondent shall provide evidence to the Division that it has revised the fraud statement to be substantially the same as what is required by Colorado insurance law.
24. Issue E11 concerns the following violation: Failure to alert covered persons who may use out-of-network providers or covered persons under indemnity plans that providers are not prohibited from balance billing. The Respondent shall provide evidence to the Division that it has implemented procedures to ensure that its Basic and Standard Health Benefit Plans alert covered persons that when using out-of-network preferred providers, or in the case of persons covered under indemnity plans, that their provider is not prohibited from balance billing except as proscribed in §10-16-704, C.R.S. The Division's records indicate that the Respondent has complied with the corrective actions ordered concerning this violation.
25. Issue E12 concerns the following violation: Failure to reflect correct procedures for adding benefits, making changes, modifications or withdrawals with amendments to the Basic and Standard Health Benefit Plans. The Respondent shall provide evidence to the Division that it has revised the language regarding amendments to the Basic and Standard plans to ensure compliance with Colorado insurance law.
26. Issue E13 concerns the following violation: Failure to reflect completely the situations in which non-emergency care delivered in an emergency room

would be covered. The Respondent shall provide evidence to the Division that it has revised the language regarding coverage for non-emergency care delivered in an emergency room to comply with Colorado insurance law.

27. Issue E14 concerns the following violation: Failure to reflect complete or correct benefit descriptions for mandated mental health services in the Standard Indemnity and PPO Health Benefit Plans. The Respondent shall provide evidence to the Division that it has revised all applicable policies to reflect complete and correct benefits for mental health services, in compliance with Colorado insurance law. The Division's records indicate that the Respondent has complied with the corrective actions ordered concerning this violation.
28. Issue E15 concerns the following violation: Failure to reflect a complete description of mandatory coverage for child health supervision services. The Respondent shall provide evidence to the Division that it has revised all applicable forms to reflect complete descriptions of the mandated child health supervision services as required by Colorado insurance law. The Division's records indicate that the Respondent has complied with the corrective actions ordered concerning this violation. The company shall also conduct a self audit from January 1, 2007, through the date of the Final Agency Order to determine whether any claims were improperly denied for immunization deficient children outside of the age limits indicated on the plans, and reprocess any such claims in accordance with the regulatory requirements.
29. Issue E16 concerns the following violation: Failure to reflect the correct format and/or benefits in the Basic and Standard Health Benefit Plan Description Forms. The Respondent shall provide evidence to the Division that it has implemented procedures to ensure that all its Colorado Health Benefit Plan Description Forms are in compliance with Colorado insurance law. The Division's records indicate that the Respondent has complied with the corrective actions ordered concerning this violation.
30. Issue E17 concerns the following violation: Failure to include a disclosure regarding the mechanisms to obtain the carrier's reimbursement rates to nonparticipating providers, and an understandable definition of eligible expenses as well as the methodology for determining the usual, customary and reasonable reimbursement rate. The Respondent shall provide evidence to the Division that it has included in conspicuous, boldfaced type, an understandable disclosure regarding the mechanisms to obtain the carrier's reimbursement rates to nonparticipating providers, and corrected the definition of eligible expenses as well as the methodology for determining the usual, customary and reasonable reimbursement rate, in order to comply with Colorado insurance law. The Division's records

indicate that the Respondent has complied with the corrective actions ordered concerning this violation.

31. Issue H1 concerns the following violation: Failure to reflect the required definition of a "Significant break in coverage" in certificates of creditable coverage. The Respondent shall provide evidence to the Division that it has implemented procedures to ensure that all Certificates of Creditable Coverage reflect the definition of a "Significant break in coverage" in compliance with Colorado insurance law.
32. Issue H2 concerns the following violation: Failure, in some instances, to offer to each member of terminating small groups a choice of the Basic or Standard Health Benefit Plan. The Respondent shall provide evidence to the Division that it has implemented procedures to ensure that each member of a terminating small group, for reasons other than replacement of coverage or fraud and abuse in procuring and utilizing coverage, is offered a choice of the Basic or Standard Health Benefit Plan in compliance with Colorado insurance law.
33. Issue J1 concerns the following violation: Failure, in some instances, to accurately process claims. The Respondent shall provide evidence to the Division that it has implemented procedures to ensure that all claims are processed correctly as required by Colorado insurance law.
34. Issue J2 concerns the following violation: Failure, in some instances, to pay, deny or settle claims within the time frames required by Colorado insurance law. The Respondent shall provide evidence to the division that it has implemented procedures to ensure that all claims are processed within the time frames required by Colorado insurance law.
35. Issue J3 concerns the following violation: Failure, in some instances, to pay late payment interest and/or penalties. The Respondent shall provide evidence to the Division that it has revised its procedures to ensure that interest and/or penalties are paid on claims that are not paid or settled within the required time periods as required by Colorado insurance law. The Division's records indicate that the Respondent has complied with the corrective actions ordered concerning this violation. The Respondent shall also perform a self audit from January 1, 2007 to the date of the Order to ensure that interest and penalties are properly disbursed on late claims.
36. Issue J4 concerns the following violation: Failure to correctly process claims for out-of-network services/treatment associated with services/treatment rendered at an in-network facility. The Respondent shall provide evidence to the Division that is has revised its claim payment procedures to ensure that all out-of-network professional claims are processed correctly when the claims are received prior to, but in connection with, an in-network facility

claim in compliance with Colorado insurance law. Additionally, a self audit should be preformed from January 1, 2007, to the date of this Order to ensure that all claims were paid at the proper benefit level, and that interest and penalties are properly disbursed where appropriate.


37. Issue K1 concerns the following violation: Failure to provide correct information related to an insured's right to appeal adverse determinations. The Respondent shall provide evidence to the Division that it has implemented procedures to ensure that its appeal procedures reflect complete and correct information regarding a member's appeal rights as required by Colorado insurance law.
38. Issue K2 concerns the following violation: Failure to provide written notification to a covered person of a review meeting within the required time frame. The Respondent shall provide evidence to the Division that it has revised its procedures to ensure that written notification of meetings held for voluntary second level review is provided within the time frames required by Colorado insurance law. The Division's records indicate that the Respondent has complied with the corrective actions ordered concerning this violation.
39. Issue K3 concerns the following violation: Failure to provide the location of the review panel meeting and thereby discouraging the covered person from requesting a face-to-face meeting. The Respondent shall provide evidence to the Division that it has implemented procedures to ensure that disclosure of the location of the second level review panel meeting is provided in all notification letters so covered persons and/or their representatives are not discouraged from requesting face-to-face meetings as required by Colorado insurance law.
40. Issue K4 concerns the following violation: Failure to have written denials of requests for benefits as not medically necessary, appropriate, effective, or efficient signed by a licensed physician. The Respondent shall provide evidence to the Division that it has implemented procedures to ensure that all written denials of requests for covered benefits on the grounds that such benefits are not medically necessary, appropriate, effective, or efficient shall be signed by a licensed physician familiar with standards of care in Colorado as required by Colorado insurance law. Additionally, the company should ensure that all cases signed by a "Resolving Analyst" are reviewed by a licensed physician, and that any corrections necessary by the physician review are made.
41. Issue K5 concerns the following violation: Failure, in some instance, to send written notification of adverse retrospective determinations. The Respondent shall provide evidence to the Division that it has implemented procedures to ensure that notification of adverse determinations are sent in

all applicable instances in compliance with Colorado insurance law. The Division's records indicate that the Respondent has complied with the corrective actions ordered concerning this violation.

42. Pursuant to § 10-1-205(3)(d), C.R.S, the Respondent shall pay a civil penalty to the Division in the amount of Two Hundred Forty-Six Thousand and no/100 dollars (\$246,000.00) for the cited violations of Colorado law. This fine was calculated in accordance with Division guidelines for assessing penalties and fines, including Division Bulletin No. B-1.3, originally issued on January 1, 1998, re-issued May 8, 2007. Said penalty shall be assessed a 15% surcharge up to \$200,000, or \$30,000.00, pursuant to 24-34-108, C.R.S. for a total balance due of \$276,000.00 which will be due to the Division within 30 days of the signing of this Final Agency Order. This surcharge will be used to fund the development, implementation and maintenance of a consumer outreach and education program.
43. Pursuant to § 10-1-205(4)(a), C.R.S., within sixty (60) days of the date of this Order, the Respondent shall file affidavits executed by each of its directors stating under oath that they have received a copy of the adopted report and related Order.
44. Unless otherwise specified in this Order, all requirements with this Order shall be completed within thirty (30) days of the date of this Order. Respondent shall submit written evidence of compliance with all requirements to the Division within the thirty (30) day time frame, except where Respondent has already complied, as specifically noted in the Order. Forms violations may be corrected by revising the appropriate noncompliant area(s) of the forms, or by issuing an addendum to correct the noncompliant areas if the Company is unable to correct the actual form within the required time period. Copies of any rate and form filings shall be provided to the rate and forms section with evidence of the filings sent to the market conduct section. All self audits, if any, shall be performed in accordance with Division's document, 'Guidelines for Self Audits Performed by Companies'. Unless otherwise specified in this Order, all self audit reports must be received within ninety (90) days of the Order, including a summary of the findings and all monetary payments to covered persons.
45. This Order shall not prevent the Division from commencing future agency action relating to conduct of the Respondent not specifically addressed in the Report, not resolved according to the terms and conditions in this Order, or occurring before or after the examination period. Failure by the Respondent to comply with the terms of this Order may result in additional actions, penalties and sanctions, as provided for by law.

46. Copies of the examination report, and this final Order will be made available to the public no earlier than thirty (30) days after the date of this Order, subject to the requirements of § 10-1-205, C.R.S.

WHEREFORE: It is hereby ordered that the findings and conclusions contained in the Report dated April 30, 2009, are hereby adopted and filed and made an official record of this office, and the above Order is hereby approved this 28th day of August, 2009.


Marcy Morrison
Commissioner of Insurance

CERTIFICATE OF MAILING

I hereby certify that on the 28th day of August, 2009, I caused to be deposited the **FINAL AGENCY ORDER NO. O-10-004 IN THE MATTER OF THE MARKET CONDUCT EXAMINATION OF UNITED HEALTHCARE INSURANCE COMPANY**, in the United States Mail via certified mailing with postage affixed and addressed to:

Ms. Elizabeth Soberg
United Healthcare Insurance Company
6465 S. Greenwood Plaza Blvd, #3000
Centennial, CO 80111



Eleanor Patterson
Market Regulation Administrator
Division of Insurance